IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7094 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

RAJNIKANT D DESAI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 7094 of 1991

MS SONAL R SHAH for MR YN OZA for Petitioner No. 1

MR DEVANG LATHIGARA for Respondent No. 1

MR HL JANI AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 24/03/2004

ORAL JUDGEMENT

1. In this petition pending since about 13 years,

listed for 50 times for hearing, the first request made on behalf of the petitioner was for an adjournment for the purpose of taking further instructions and do legal research for citing relevant judgments. Learned counsel Mr.Lathigara, appearing for the respondent, objected to any further adjournment although he admitted that no reply was filed for the respondent in respect of the additions made to the petition by way of amendment permitted by order dated 16.2.2001. The petition appears to have been filed in the year 1991 and "Rule. Expedited" appears to have been issued on 18.10.1991. Thus, the matter has to be decided on the basis of the material on record as on today.

2. The petitioner, according to the petition, is a senior clerk employed under the respondent No.1 by whom disparaging remarks in relation to the year 1987-88 were communicated. The adverse remarks in his Confidential Report read:

> "Mr.R.D.Desai is untrustworthy, inefficient, lethargic and indisciplined worker. His overall performance is absolutely poor".

The petitioner had made a representation against the remarks and it was decided on 9.4.1991 even as, in the meantime, the petitioner had approached the Gujarat Civil Service Tribunal by filing an appeal to challenge the promotion given to another clerk junior to the petitioner without disclosing the adverse remarks and it was dismissed by the Tribunal by order dated 23.8.1991. The adverse remarks and the aforesaid order of the Tribunal are challenged by the petitioner. In another proceeding, namely, Special Civil Application No.4525 of 1991, the petitioner is stated to have challenged the action of the respondent in initiating departmental enquiry against him after lapse of five years of his acquittal by Criminal Court. Admittedly, the chargesheet is given to the petitioner on 10.5.1991. By addition of para 3-A in the petition, the petitioner added the grievance and prayer to the effect that, even after five years of the adverse remarks under challenge, the petitioner was not considered for promotion after July, 1988 and hence he was required to be at least considered for promotion after the year 1993 even as persons junior to him in the same cadre were being promoted.

3. It is stated in the affidavit-in-reply dated 17.2.1992 of the respondent No.1, District Development Officer, that the explanation tendered by the petitioner against the adverse remarks for the year 1987-88 had been

considered and not accepted. Thereafter, the petitioner had preferred an appeal before the Development Commissioner, the respondent No.2, and that appeal was dismissed by order dated 9.4.1991 confirming the adverse remarks. The Tribunal had also dismissed the appeal of the petitioner on merits. It is denied that the adverse remarks were vague and that the respondent No.1 had no power to make adverse remarks. It is averred in the affidavit-in-reply that the stay granted by this Court in Special Civil Application No.4525 of 1991 against the proceedings of departmental enquiry against the petitioner was vacated after hearing the respondent and that fact was suppressed by the petitioner to mislead the Court.

4. During the course of hearing, there was no reply from the petitioner to the queries regarding the status of the departmental enquiry held against the petitioner which may amount to suppression of material facts which would have a bearing on the question of promotion of the petitioner. As for the contentions contained in the petition, the learned counsel submitted that, even if no ground was made out to interfere with the impugned order of the Gujarat Civil Service Tribunal in Appeal No.141 of 1991, the case of the petitioner ought to have been considered for promotion after the year 1993 since the adverse remarks for the last five years only could be considered for the purpose of promotion according to the policy and resolution of the Government dated 7.2.1995. In absence of any reply by the respondent with respect to the promotion after the year 1993 and in absence of any statement or disclosure of facts in respect of the departmental enquiry held against the petitioner in the year 1991, it would be hazardous to consider issuance of a writ of mandamus or any other direction to consider the case of the petitioner for promotion. In these facts and circumstances, the petitioner is not entitled to any relief, much less a mandatory direction to promote the petitioner as prayed in the petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)